

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number

042933/272518

**(filed with the Notice of Appeal)**

Application Number

10/749,042

Filed

12/30/2003

First Named Inventor

Jon C. Graff

Art Unit

3621

Examiner

Nancy Loan T. Le

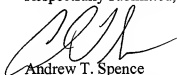
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

Respectfully submitted,



Andrew T. Spence

Registration No. 45,699

Date October 17, 2008

**Customer No. 00826**

**ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

LEGAL02/30997311v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON OCTOBER 17, 2008.

## Attachment

### Reasons for Requesting Pre-Appeal Brief Request For Review (no more than five 5 pages may be provided)

These remarks are hereby filed concurrent with a Pre-Appeal Brief Request for Review, following a final Official Action of April 17, 2008, on a Request for Continued Examination (RCE) of the present application. The final Office Action continues to reject all of the pending claims, namely Claims 1-18, under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2004/0078573 to Matsuyama. As explained below, Appellant respectfully maintains that the Official Action fails to *prima facially* reject Claims 2-18, and that the claimed invention is patentably distinct from Matsuyama. In view of the remarks presented herein, Appellant respectfully requests reconsideration and withdrawal of the rejections of all of the pending claims.

#### ***A. Note regarding Claim Construction***

Initially, Appellant notes that in the first and now the final Official Action, the Office has failed to provide Appellant with a sufficient claim construction or interpretation of Matsuyama so as to enable the Appellant to effectively reply or readily judge the advisability of an appeal. See MPEP §§ 706, 706.07. In this regard, as has been recognized by the Board of Patent Appeals and Interferences (BPAI), “The Examiner must make specific findings as to claim construction.” *Ex parte* Blankenstein et al., Appeal No. 2007-2872, Application No. 10/116,312 (BPAI Aug. 26, 2008); and *see* *Gechter v. Davidson*, 116 F.3d 1454 (Fed. Cir. 1997) (emphasis added). In the instant case, other than quoting or paraphrasing Appellant’s claim language with annotated citations to figures, or column and line numbers of Matsuyama, the Office provides no finding or other explanation regarding Appellant’s claims, Matsuyama, or the application of Matsuyama to Appellant’s claims.

#### ***B. The Examiner fails to Prima Facially Reject Claims 2-18***

Appellant also maintains that the Examiner fails to establish *prima facie* anticipation or obviousness of any of Claims 2-18. As stated in the MPEP, anticipation of the claimed invention requires the cited reference to explicitly or inherently teach each and every element of the

claimed invention. MPEP § 2131. Likewise, all of the elements of a claimed invention must be taught or suggested by the prior art to establish *prima facie* obviousness of a claimed invention. MPEP § 2143.03 (*citing In re Royka*, 490 F.2d 981 (CCPA 1974)). In the instant case, however, the Examiner fails to allege prior art, including Matsuyama or any other prior art, that teach or suggest the limitations of any of Claims 2-18. In fact, the Examiner only substantively considers independent Claim 1. And even if that consideration somehow were also attributed to similar independent Claims 7 and 13, Appellant respectfully submits that the Examiner still fails to allege prior art that teach or suggest the limitations of any of Claims 2-6, 8-12 and 14-18.

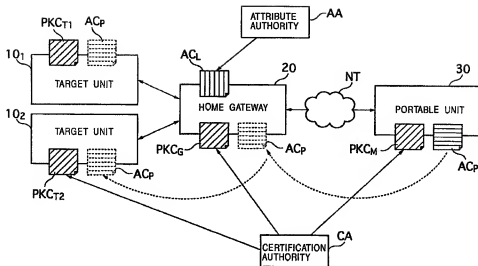
### ***C. The Claimed Invention is Patentable over Matsuyama***

As indicated above, Claims 1-18 stand rejected as being anticipated by Matsuyama. As explained below, however, Appellant respectfully submits that the claimed invention is patentably distinct from Matsuyama.

#### ***1. Matsuyama***

Briefly, Matsuyama discloses a remote access system that includes accessible target units of a home network, a home gateway serving the home network, and a portable unit carried by the user to access the target units. As disclosed, the portable unit may access the target units by sending and presenting, to the target units through the home gateway, an attribute certificate describing at least a privilege with regard to a resource and information of the home gateway.

As more particularly disclosed with reference to FIG. 6 (reproduced below) and cited against independent Claim 1 of the present application, Matsuyama discloses an attribute authority AA providing a role assignment certificate RAAC (shown as certificate AC<sub>L</sub>) that permits the home gateway to issue a role specification certificate RSAC (shown as certificate AC<sub>P</sub>) to a portable unit. The RAAC/AC<sub>L</sub> is owned by the home gateway (described as individuals M1, M2 and M3 – see paragraph 0083, “The home gateway 20, shown in FIG. 6 and corresponding to the individuals M1, M2, and M3 ...”), and indicates roles to which the home gateway belongs. The roles are conceptually privileges, and accordingly, the RSAC/AC<sub>P</sub> indicates the privileges permitted to the respective roles.



Matsuyama. FIG. 6

In operation (see at least FIG. 13), once the attribute authority AA has issued a RAAC/AC<sub>L</sub> to the home gateway, and the home gateway in turn has issued a RSAC/AC<sub>P</sub> to a portable unit, the portable unit may access a resource of a target unit by performing a mutual authentication with the home gateway using a public-key certificate PKC<sub>M</sub> assigned to the portable unit (by a certification authority CA). The portable unit then submits its RSAC/AC<sub>P</sub> to the home gateway, which in turn, submits it to the target units. The target units receive the RSAC/AC<sub>P</sub> from the home gateway, and verify its content; and if affirmatively verified, permit access to their resources from the portable unit.

## 2. The Claimed Invention

In accordance with one aspect of the present invention, as reflected by independent Claim 1, a system is provided that includes an apparatus, a secondary certification authority (CA) processor, a tertiary CA processor and a server. As recited, the apparatus is programmed to communicate or facilitate communication within and/or across one or more networks. The apparatus is also included within an organization including a plurality of apparatuses, where one or more apparatuses have one or more characteristics and are at one or more of a plurality of positions within the organization. The organization includes a plurality of secondary CA processors programmed to issue role certificates to respective groups of apparatuses of the

organization, and includes a plurality of tertiary CA processors programmed to issue permission certificates to respective sub-groups of apparatuses of the organization. In this regard, the secondary CA processor is programmed to provide one or more role certificates to the apparatus based upon the position of the apparatus within the organization. The tertiary CA processor, on the other hand, is programmed to provide at least one permission certificate to the apparatus based upon the characteristics of the respective apparatus. Thus, the server is programmed to authenticate the apparatus based upon an identity certificate, the role certificate and the permission certificate of the apparatus to thereby determine whether to grant the apparatus access to at least one resource of the server.

### **3. *Distinctions between Matsuyama and the Claimed Invention***

In contrast to independent Claim 1, Matsuyama does not teach or suggest providing both a role certificate (based on a position of an apparatus in an organization) and a permission certificate (based on a characteristic of the apparatus located at the respective position) to the apparatus, and authenticating the apparatus based on both those certificates as well as an identity certificate. Matsuyama may disclose multiple certificates including a RAAC/AC<sub>L</sub> and a RSAC/AC<sub>P</sub>. But nowhere does Matsuyama teach or suggest that these certificates (or any other certificates) are provided to an apparatus based on a position of an apparatus in an organization and a characteristic of the apparatus located at the respective position, as are the role and permission certificates of independent Claim 1.

Matsuyama may also disclose authenticating a portable unit based on multiple certificates including the unit's public-key certificate PKC<sub>M</sub> and a RSAC/AC<sub>P</sub>. But nowhere does Matsuyama disclose a server that authenticates the portable unit based on role, permission and identity certificates, similar to the server of independent Claim 1. Instead, Matsuyama discloses a home gateway authenticating the portable unit based on the public-key certificate PKC<sub>M</sub>, and a target unit authenticating the portable unit based on the RSAC/AC<sub>P</sub>. And although one could argue that the public-key certificate PKC<sub>M</sub> of Matsuyama corresponds to the recited identity certificate, the system of independent Claim 1 still authenticates a terminal based on at least a pair of additional certificates, i.e., role and permission certificates. Matsuyama, on the other hand, authenticates its portable unit only using one additional certificate (and by a separate network entity, i.e., the target unit).

Appellant therefore respectfully submits that independent Claim 1, and by dependency Claims 2-6, is patentably distinct from Matsuyama. Appellant also respectfully submits that independent Claims 7 and 13 recite subject matter similar to amended independent Claim 1. For example, independent Claims 7 and 13 recite providing a role certificate and a permission certificate, and authenticating an apparatus based upon those certificates as well as an identity certificate. Accordingly, Appellant respectfully submits that independent Claims 7 and 13, and by dependency Claims 8-12 and 14-18, are patentably distinct from Matsuyama for at least the same reasons given above with respect to independent Claim 1.